

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DAVID KAY WIENS,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-06-1286-F
)	
M.D. DOCTOR ZEAVIN, et al.,)	
)	
Defendants.)	

ORDER

On November 30, 2007, United States Magistrate Judge Valerie K. Couch issued a Report and Recommendation, wherein she recommended the following: (1) Defendants' Motion to Dismiss as supplemented by Defendants' Supplemental Motion to Dismiss be construed as a motion for summary judgment and granted; (2) plaintiff's "Notice of Filing Amended Complaint With Included Plaintiff's Response to Defendants' Motion to Dismiss and Brief in Support" be construed as a motion to amend plaintiff's complaint and denied; (3) plaintiff's Motion to Compel Production of Medical Records, Motion for Request for Jury Trial, and Motion for Extension of Time to Allow for Additional Discovery be denied; and (4) any claims against defendants John Doe Federal and State Officials be dismissed for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1).

Presently before the court is plaintiff's timely objection to the Report and Recommendation. Plaintiff specifically objects to Magistrate Judge Couch's recommendation that defendants' motion to dismiss construed as a motion for summary judgment be granted. Plaintiff asserts various errors made in the Report and

Recommendation. The court has conducted a *de novo* review of the matter. Having done so, the court agrees with the recommendation of Magistrate Judge Couch. The court concludes that plaintiff has failed to present sufficient evidence to raise a genuine issue of material fact in regard to his Eighth Amendment claim against defendants. The court therefore accepts and affirms Magistrate Judge Couch's recommendation in regard to defendants' motion.

In his objection, plaintiff contends that Magistrate Judge Couch erred in failing to construe his Motion for Request for Jury Trial as a motion for summary judgment. Assuming without deciding that Magistrate Judge Couch erred and the motion should have been construed as one for summary judgment, the court concludes that plaintiff's motion should still be denied. Plaintiff has not shown that he is entitled to summary judgment on his Eighth Amendment claim against defendants. The recommendation of Magistrate Judge Couch to deny plaintiff's motion shall therefore be accepted and affirmed based upon the reasons stated by the court.

The court notes that plaintiff has not specifically objected to the recommendations of Magistrate Judge Couch to deny plaintiff's motion to amend the complaint, to deny plaintiff's motion to compel production of medical records and motion for extension of time to allow for additional discovery or to dismiss any claims against defendants John Doe Federal and State Officials. With no objection being filed to these recommendations, the court accepts and affirms the recommendations in their entirety.

IT IS THEREFORE ORDERED that the Report and Recommendation issued by United States Magistrate Judge Valerie K. Couch on November 30, 2007 (doc. no. 57), is **ACCEPTED** and **AFFIRMED**.

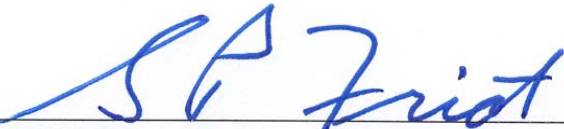
IT IS ALSO ORDERED that Defendants' Motion to Dismiss (doc. no. 40) as supplemented by Defendants' Supplemental Motion to Dismiss (doc. no. 50), construed as a motion for summary judgment, is **GRANTED**.

IT IS ADDITIONALLY ORDERED that plaintiff's "Notice of Filing Amended Complaint With Included Plaintiff's Response to Defendants' Motion to Dismiss and Brief in Support" (doc. no. 48), construed as a motion to amend plaintiff's complaint, is **DENIED**.

IT IS FURTHER ORDERED that plaintiff's Motion to Compel Production of Medical Records (doc. no. 45), Motion for Request for Jury Trial (doc. no. 47), and Motion for Extension of Time to Allow for Additional Discovery (doc. no. 54), are **DENIED**.

IT IS FINALLY ORDERED that any claims against defendants, John Doe Federal and State Officials, are **DISMISSED** for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1).

DATED January 22, 2008.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE